

MEMORANDUM OF LAW

DATE: April 23, 1986

TO: Will Sniffin, Deputy Director, Water
Utilities

FROM: City Attorney

SUBJECT: City Lakes Recreational Plan Review

You recently asked our review of The City Lakes Recreational Development Plan - 1986. We understand this plan to be recommendations made by the City Lakes Committee without regard to historical policy restraints or charter funding restrictions. Before consideration of this plan by the Park and Recreation Board, you asked that we review its recommendations for any legal impediments.

As our summary review shows several substantial problem areas, we intend by this memorandum to point out the problem areas and trust that this will lead to a more refined plan.

1. Amending Council Policy 400-3

The plan recommends amending Council Policy 400-3 to permit the establishment of "special assessment districts for the purpose of assessing cost to adjacent developments" Assessment Districts are highly technical matters. Without knowing what is to be provided, we cannot assess the propriety of an assessment district. The general rule for assessment districts is stated as follows:

¶The underlying principle of (such) assessments is that the improvement, aside from the mere general advantage resulting to the community at large, will result in some special benefit to the particular lot owners whose lands are assessed--a special benefit to the assessed lands in which the general public does not participate.

Federal Const. Co. v. Ensign,
59 Cal.App. 200, 210 (1922)

Accord, Solvang Muni. Improvement Dist.
v. Board of Supervisors, 112 Cal.App.3d
545 (1980)

Hence we have created assessment districts for both open space acquisition and maintenance functions. San Diego Municipal Code sections 61.2010 et seq. and 65.0201 et seq. But without knowing what public improvements are sought and

how those improvements create a special benefit for adjacent properties, we cannot pass on the legal propriety of this recommendation.

2. "Lakes Benefit Assessment Fund"

The same vagueness pervades this recommendation since this fund is contemplated from "any special developments ... on City-owned property adjacent to City Lakes" Neither the nature of the development nor the nature of the revenue are articulated. As we will develop more fully infra, the San Diego City Charter jealously guards all revenue produced in conjunction with Water Utility land and resources limiting their use to benefit the accounts of the Water Utility Department. San Diego City Charter sections 53 and 90.1. See San Diego City Att'y Op. 80-8 (1980).

3. Allocation of all revenues from rent, lease or sale of Utilities Department owned properties to the recreational programs.

This proposal is unquestionably prohibited by San Diego City Charter sections 77, 53 and 90.1 which provide in part:
SECTION 77. CAPITAL OUTLAY FUND.

There is hereby created a fund in the City Treasury, to be known as the Capital Outlay Fund. Into this fund each year there shall be placed ... all proceeds received from the sale of city-owned real property.

The moneys in the Capital Outlay Fund shall be used exclusively for the acquisition, construction and completion of permanent public improvements, ... but not the repair or maintenance thereof, and shall not be used for any other purpose or transferred from said fund, except with the consent of two-thirds of the qualified electors of said City, voting at a general or special election.

City Charter Section 53 provides in part:

There shall be included in the administrative organization of the City a separate utility to be known as the Water Utility

All revenues of the Water Utility shall be deposited in a Water Utility Fund

Section 90.1 of the Charter provides for the sale of revenue bonds to finance waterworks. The section provides in part:

"Waterworks" means all facilities, property and works of the City for the development, obtaining, conservation ... and distribution of water

"Revenues" includes all monies received from rates, tolls or charges for water ... and all other income and receipts derived from the use of ... the Waterworks ... , or any other income of the Water Department

"Revenue Bonds" shall not constitute an indebtedness of the City but shall constitute obligations which shall be payable ... only from a special fund which shall consist of such revenues of the Water Department as are in excess of the amount needed to operate and maintain the Water Department

Section 90.1 continues to describe a special fund for bonds known as the "Water Department Revenue Bond Fund." Currently there exists \$1,860,000 in outstanding bonds. The City of San Diego Water Utilities Department Annual Financial Report 1985. These bonds contain certain covenants restricting the use of all revenues in excess of the cost of Water Utilities operations to the Water Department Bond Fund. San Diego City Att'y Op. 80-6 (1980); San Diego City Att'y Memorandum, dated August 29, 1967.

As you can readily see, the sale of all City land must be deposited into the Capital Outlay Fund and its use is restricted thereby. Further all revenue from the lease or sale of Water Utility land must be utilized solely and exclusively for water related purposes. San Diego City Att'y Ops. 80-6 and 80-8 (1980).

4. Establishing Special Assessment Districts

As we pointed out in Section 1, the basis for all assessment districts is the special benefit from the identified improvement derived by the property to be assessed. San Diego City Att'y Op. 72-2 (1972). Thus for specifically identified improvements we have used a variety of mechanisms to pay for public improvements. See e.g., San Diego Municipal Code sections 61.0301 et seq.; 61.2000 et seq.; 61.2200 et seq. and 102.0406.06.1 et seq. But since common to all must be the nexus between improvement and specific benefit to property assessed, we cannot evaluate any "assessment district" in the abstract. Hence before the legality of any special assessment district can be evaluated,

we must know the precise improvement to be financed and how that improvement benefits the property to be assessed.

This review provides you with our thoughts on the Major Considerations and Funding Recommendations of The City Lakes Recreational Development Plan - 1986. Without more detail we have been limited to pointing out problem areas. As specifics are developed, we can advise you accordingly.

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By

Ted Bromfield

Chief Deputy City Attorney

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